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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,538	06/26/2003	Anders Magnusson	12389-004001 / PD53566US0	5773
26191	7590	07/13/2006	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/606,538		MAGNUSSON, ANDERS	
	<b>Examiner</b>		<b>Art Unit</b>	
	Melanie J. Hand		3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 7-10, 66-68 and 72-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7-10, 66-68 and 72-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/13/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I, species 1, claims 1-3, 7-10, 66-68 and 72-75 in the reply filed on April 26, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Priority***

Acknowledgment is made of applicant's claim for priority under copending Provisional Application No. 60/391,667 filed on June 27, 2002.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on September 13, 2004 was filed after the mailing date of the Application on June 26, 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 8-10, 66-68 and 73-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Brennen et al (WO 93/04724).

With respect to **Claim 1**: Brennen teaches a steerable stylet assembly comprising a tubular body 10 having a distal region 22, ring member 32 that encircles at least a portion of the circumference of tubular body 10 and is slidable along said tubular body, and elongate pull wire 12 having a proximal end in proximal section 14 and a distal end in distal section 16. The distal end of pull wire 12 is fixedly attached (i.e. coupled) to said tubular body at said distal end 22. The proximal end of pull wire 12 is attached to the ring member 32 via its interconnection with lever 34 and clip 36, said lever 34 having a free end attached to slidable member 32.

With respect to **Claim 2**: Tubular member 10 includes an inner lumen, an outer surface and first and second apertures 18 and 20 (pair of openings) passing between the outer surface and the inner lumen. Pull wire 12 (elongate member) is attached at the distal end 22 of tubular body 10 and extends loosely outside said lumen for a predetermined distance, therefore also extending through said apertures. Thus the coupling of said second elongate member to the distal region of said tubular body comprises the second elongate member passing through the pair of openings.

With respect to **Claim 3**: As can be seen in Fig. 1, the pull wire passes between said ring member 32 and said pair of openings 18,20.

With respect to **Claim 8**: Brennen teaches clip 36 (connector piece) attached to slidable member 32 which is itself attached to a proximal region of tubular body 10.

With respect to **Claim 9**: The distal region of tubular body 10 is flattened between the openings 18,20 to provide a predetermined bias to curve away from wire 12 as the wire is drawn taut between said openings. This section of the distal region of body 10 between said openings has a first stiffness and the remainder of the body 10, i.e. the proximal region, has a second stiffness, wherein the first stiffness is less than the second stiffness.

With respect to **Claim 10**: The section of tubular body between said openings 18,20 defines a first stiffness from the distal end 22 to opening 18 immediately adjacent the proximal region having a second stiffness.

With respect to **Claim 66**: Brennen teaches a steerable stylet assembly comprising a tubular body 10 (first elongate member) having a distal region 22, ring member 32 (protruding member) that extends outward from an outer surface of body 10, encircles at least a portion of the circumference of said body, and is slidably coupled to said tubular body, and elongate pull wire 12 (second elongate member) having a proximal end in proximal section 14 and a distal end in distal section 16. The distal end of pull wire 12 is fixedly attached (i.e. coupled) to said tubular body at its distal end 22. The proximal end of pull wire 12 is attached to the ring member 32 via its interconnection with lever 34 and clip 36, said lever 34 having a free end attached to slidable member 32.

With respect to **Claim 67**: Tubular member 10 (first elongate member) includes an inner lumen, an outer surface and first and second apertures 18 and 20 (pair of openings) passing between the outer surface and the inner lumen. Pull wire 12 (second elongate member) is attached at the distal end 22 of tubular body 10 and extends loosely outside said lumen for a predetermined

distance, therefore also passing through said apertures. Thus the coupling of said second elongate member to the distal region of the first elongate member comprises the second elongate member passing through the pair of openings.

With respect to **Claim 68**: As can be seen in Fig. 1, the pull wire (second elongate member) passes between said protruding member 32 and said pair of openings 18,20 along the outer surface of tubular body 10 (first elongate member).

With respect to **Claim 73**: Brennen teaches clip 36 (connector piece) attached to slidable member 32 which is itself attached to a proximal region of tubular body 10 (first elongate member).

With respect to **Claim 74**: The distal region of tubular body 10 (first elongate member) is flattened between the openings 18,20 to provide a predetermined bias to curve away from wire 12 as the wire is drawn taut between said openings. This section of the distal region of body 10 between said openings has a first stiffness and the remainder of the body 10, i.e. the proximal region, has a second stiffness, wherein the first stiffness is less than the second stiffness.

With respect to **Claim 75**: The section of tubular body 10 (first elongate member) lying between said openings 18,20 defines a first stiffness from the distal end 22 to opening 18 immediately adjacent the proximal region having a second stiffness.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 7 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brennen et al (WO 93/04724) in view of Maloney et al (U.S. Patent No. 4,906,230).

With respect to **Claim 7**: Brennen teaches a stainless steel pull wire and therefore does not teach single length of thread. Maloney teaches a steerable catheter employing a mechanism comprising a string-like element, e.g. chord, suture or cable or the like. ('230, Col. 2, lines 28-32) The wire taught by Brennen is considered herein to be a string-like element as taught by Maloney, and Maloney teaches that a suture (thread) is equivalent to a chord or cable (e.g. a wire). Therefore it would be obvious to one of ordinary skill in the art to substitute a thread for the wire taught by Brennen with a reasonable expectation of success.

With respect to **Claim 72**: Brennen teaches a stainless steel wire for pull wire 12 (second elongate member) and therefore does not teach single length of thread. Maloney teaches a steerable catheter employing a mechanism comprising a string-like element, e.g. chord, suture or cable or the like. ('230, Col. 2, lines 28-32) The wire taught by Brennen is considered herein to be a string-like element as taught by Maloney, and Maloney teaches that a suture (thread) is equivalent to a chord or cable (e.g. a wire). Therefore it would be obvious to one of ordinary skill in the art to substitute a thread for the wire taught by Brennen with a reasonable expectation of success.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



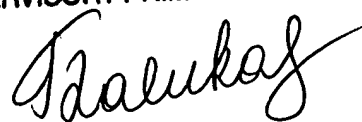
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Art Unit: 3761

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Melanie J Hand  
Examiner  
Art Unit 3761

MJH

**SUPERVISORY PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read 'T. Zalukaeva', written in a cursive style.

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**